IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.764 OF 2004
IN
EXECUTION APPLICATION NO.563 OF 2001
IN
ARBITRATION AWARD DAD 12.11.1999

Cargo Motors Ltd. ..Claimants.
Vs.
Indian Oil Corporation. ..Applicant.
And
State Bank of India. ..Respondent.

Mr. R. Shah i/by Rajani & Associates for Applicant/Claimant.

N.Engineer i/by Desai & Diwanji for the Original respondent.

Ms. Manisha Pant i/by Bhave and Co. for the Respondent.

CORAM : A.M. KHANWILKAR, J.
DATED : 5TH JULY, 2005

P.C.:

1. This is another attempt of raising the same issue which was agitated by the applicant before the Single Judge, as can be seen from the Judgment delivered by the Single Judge in Chamber Summons No.131 of 2002. In Paragraph-10,12 and 13, issue regarding claim of the applicant in respect of difference receivable by the applicant, as claimed by the applicant, has been squarely answered. That

decision was carried in appeal before the Division Bench of this court and the only contention which was canvassed before the Division Bench, as can be seen from the order passed in Appeal No.805 of 2002, dated 18.12.2002, by the applicant, is in respect of Issue No.8 decided by the learned Arbitrator in the award as passed.

2. As mentioned earlier, this is another attempt to raise the same issue, which has been considered on the earlier occasion by this court and answered against the applicant. I find substance in the argument canvassed on behalf of the applicant/original respondents that the claimants have not approached this court with clean hands. The fact that the issue was specifically raised and decided against the applicant has not been referred to in affidavit in support of this application. That is a suppression of material fact by the applicant. All the arguments founded on the plea taken in the chamber summons are already answered in the decision of the Single Judge passed on 2.4.2002 and confirmed by the Division Bench on 18.12.2002. The chamber summons as taken out, therefore, as rightly contended by the counsel for the original respondents, deserves to be dismissed at the

threshold with exemplary costs. Reliance has been rightly placed on the decision of our High Court in the case of **Agarwal Industries Ltd. Vs. Golden Oil Industries Pvt. Ltd. reported in A.I.R.1999 Bombay 36** that such petition should be thrown out at the threshold by imposing costs. As claimants have not approached this court with clean hands, application deserves to be dismissed with exemplary costs quantified at Rs.10,000/- (Ten thousand only) to be paid to the original respondents within one week from today.

(A.M. KHANWILKAR,J.)